

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TOREY BRETT LOGAN and
ASHLEY LYNN CRAIN,
in their personal capacity and
as next friends for A.N.L. and
L.G.L., minor children,

Plaintiffs,

v.

No. 18cv99 JAP/CG

JORY BASCOM and
SILVER CITY POLICE DEPARTMENT,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

On January 29, 2018, *pro se* Plaintiff Torey Brett Logan filed his Prisoner's Civil Rights Complaint (Doc. No. 1) (Complaint).¹ The Court will **DISMISS** this case **without prejudice**.

Plaintiff Logan alleges that while he was a pre-trial detainee at the Grant County Detention Center in Silver City, New Mexico, Defendant Bascom, a detective with the Silver City Police Department, visited Plaintiffs' landlord and demanded that the Plaintiffs be evicted due to allegations of illegal activity by Plaintiff Logan. Plaintiffs and their children were evicted. The Complaint asserts five tort claims against Defendants: (i) Intentional infliction of emotional distress; (ii) Intentional infliction of financial stress; (iii) Negligence; (iv) Libel; and (v) Slander.

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) ("Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction"). Plaintiff's Complaint

¹ Plaintiff did not pay the filing fee or file an Application to proceed *in forma pauperis* under 28 U.S.C. § 1915.

does not contain “a short and plain statement of the grounds for the court’s jurisdiction” as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure.

The Court does not have jurisdiction over this matter. *See Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass’n*, 859 F.2d 842, 843 (10th Cir.1988)). Although Plaintiff Logan currently resides at Carroll County Detention Center in Berryville, Arkansas, Plaintiff Logan states he is a citizen of New Mexico and gives a New Mexico mailing address. *See Smith v. Cummings*, 445 F.3d 1254, 1260 (10th Cir. 2006) (“a prisoner is presumed to be a citizen of the state of which he was a citizen before his incarceration, even if he is subsequently incarcerated in another state”). There are no allegations regarding the citizenship of Plaintiff Crain. The Complaint also indicates that Defendants are citizens of New Mexico. *See* Complaint at 1. Consequently, there is no properly alleged diversity jurisdiction. Nor is there any properly alleged federal question jurisdiction because there are no allegations that this action arises under the Constitution, laws, or treaties of the United States.²

The Court will dismiss the Complaint without prejudice for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir.2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court,

² The Complaint contains conclusory allegations that Defendants’ actions “violated Constitutional Rights of due process, instituted unjust pre-trial punishments,” and denied Plaintiffs due process. Complaint at 7. The Complaint does not contain any factual allegations to support the conclusory allegations. Plaintiff Logan filed another complaint alleging a Fourteenth Amendment violation of unconstitutional punishment while Plaintiff Logan was a pretrial detainee. *See Logan v. Bascom*, No. 18cv98 SMV/CG (D.N.M. January 29, 2018).

having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

IT IS ORDERED that this case is **DISMISSED** without prejudice.


SENIOR UNITED STATES DISTRICT JUDGE